THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

WRIT PETITION Nos.12842, 12843, 13147, 13148 and 13149 of 2007

DATE: 05.11.2007

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Parveen Jehan Begum

….Petitioner

and

S.Anjaiah Goud and others

….Respondents

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

WRIT PETITION Nos.12842, 12843, 13147, 13148 and 13149 of 2007

COMMON ORDER: (per BPR, J)

Since a common question is arising out of all these writ petitions, the same can be taken up together for disposal.

Heard Shri Vilas Afzulpurkar, learned Senior Counsel appearing for the petitioners and Shri V.L.N.G.K.Murthy, learned counsel appearing on behalf of the contesting respondents.

The only short question arising for consideration from out of the facts and circumstances of the case is that in a given situation, where a case has been decided by the two Members of a Tribunal, who had differed in the opinion, and was referred to the Chairman, any application filed before the Chairman should be disposed of by such referee or not.

The facts, which are not in dispute and without going into the merits of the claims as set forth by both sides, are that the main case has already been heard by the Bench, which passed the judgment with a differing view and ultimately, it was referred to the Chairman and the same is pending. At this stage, I.A.Nos.423, 426, 424, 422 and 425 of 2007 have been filed for recalling, for production of certain

documents, for receiving certain documents, for reopening of evidence and also for appointment of an Advocate Commissioner for making local inspection and the same are not being considered. Hence, the complaint on behalf of the petitioners is to the effect that there is absolutely no justification for the Chairman in not considering those applications on merits independently and passing orders before the main case is taken up.

However, during the course of arguments, it has been pointed out that as per the orders passed on 30.04.2007, the learned Chairman has already made an observation making it clear that the counsel should advance his arguments in the main case as well as in pending interlocutory applications.

From the above said argument, it is amply clear that there is absolutely no hesitation or any restraint being exercised by the third Member i.e. the Chairman in taking up the applications for consideration thereof. The only objection now sought to be urged is that whether these applications should be disposed of before the main case is taken up.

It is contended on behalf of the petitioners by placing reliance on sub-clause (4B)(e) of Section 7 of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 to the effect that in such a situation where the matter is referred to a Third Member, that Member or Chairman, as the case may be, after such hearing as he thinks fit, shall deliver his opinion and the decision or order shall follow that opinion. It is also contended that this would amply confers powers on the Third Member to consider the applications independently. There is no dispute in accordance with the proposition as to the scope of the powers of the third Member and necessarily as rightly observed in the aforesaid order, it is for the third Member to follow appropriate procedure and

take up the applications and the main case.

From out of the aforesaid events, it is quite clear that these are the matters, which necessarily have to be left open for the Presiding Officers of the said Court or Tribunal to follow procedure in the manner, which they feel it more appropriate. Further, the very observation as pointed out is that these applications were taken along with the main case prima facie appears to be more justified, rather than taking up the applications independently. In fact, these applications are not filed at the time, when the matter has been considered by the two Members, who had differed in the opinion. After hearing the main case only, the relief sought for or otherwise of the applications filed by the petitioners can be properly appreciated. Without hearing the main case, any consideration of applications would be totally premature. After hearing the main case along with the applications, it is for the Presiding Officer to pass appropriate orders either way on merits in accordance with law. Hence, we do not find any merit in the contention that the applications have to be independently disposed of by the Third Member i.e. the Chairman.

The writ petitions are accordingly dismissed.

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B.PRAKASH RAO, J

5th NOVEMBER, 2007

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D.APPA RAO, J

Note: c.c. in one week.

B/o

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